

R. K. asks the Appeals Board of the Utah Labor Commission to review the Administrative Law Judge's dismissal of Ms. K.'s complaint of unlawful employment discrimination against Utah Valley Regional Medical Center under the Utah Antidiscrimination Act, Title 34A, Chapter 5, Utah Code Annotated.

The Appeals Board's jurisdiction in this matter is governed by §63-46b-12 of the Utah Administrative Procedures Act and §34A-5-107(11) of the Utah Antidiscrimination Act.

### **ISSUES PRESENTED**

Ms. K. contends that the statute of limitation applicable to her complaint against Utah Valley Regional Medical Center should be tolled for the period of July 6 through November 30, 1998. Before considering the merits of Ms K.'s argument, the Appeals Board must first determine whether her motion for review was filed within the 30 day time limit imposed by the Utah Administrative Procedures Act ("UAPA"; Title 63, Chapter 46b, Utah Code Annotated).

### **FINDINGS OF FACT**

The ALJ issued his decision and mailed a copy to Ms. K. and her attorney on November 20, 2001. At 5:19 p.m. on December 20, 2001, one of the Labor Commission's fax machines received a transmission of Ms. K.'s motion for review.

### **DISCUSSION AND CONCLUSIONS OF LAW**

Section 63-46b-12 of UAPA allows a party dissatisfied with an ALJ's decision 30 days in which to file a motion for further agency review. This 30 day filing deadline is jurisdictional. Maverik v. Industrial Commission, 860 P.2d 944 (Utah App. 1993). Section 34A-5-107(11)(b) of the Utah Antidiscrimination Act provides "if there is no timely request for review the order issued by the (ALJ) becomes the final order of the commission."

A motion for review is not "filed" until it is actually received by the Labor Commission. Maverik 860 P. 2d at 950. Labor Commission rule R600-2-1, states: "Any official document, including fax transmissions, received after 5:00 p.m. shall be considered received on the next working day."

In this case, the ALJ's decision was issued on November 20, 2001. In order for the Appeals Board to obtain jurisdiction to review the ALJ's decision, Ms K.'s motion for review had to be actually received by the Commission no later than the 5 p.m. on December 20, 2001. In fact, the motion for review was not received until 5:19 p.m. It was, therefore, filed on December 21, 2001, one day after the appeal period had expired. Because Ms K. did not file her motion for review within the 30 day period allowed by law, the Appeals Board lacks jurisdiction to consider Ms. K.'s motion for review further.

**ORDER**

The Appeals Board dismisses Ms K.'s motion for review as untimely. The prior decision of the ALJ remains in effect. It is so ordered.

Dated this 22<sup>nd</sup> day of March, 2002.

Colleen S. Colton, Chair  
L. Zane Gill  
Patricia S. Drawe